

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 305 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME TAX

Versus

MEHTA PARIKH AND CO PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 305 of 1987
MR MR BHATT for Petitioner No. 1
Notice Served for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following two questions for the opinion of this Court, under Section 256(1) of the Income Tax Act, 1961, at the instance of the revenue:-

"1. Whether, in law and on facts, the assessee is entitled to a weighted deduction under section 35-B of the Income-tax Act, 1961 in respect of Rs.2,434/- being rent payment and Rs.20,640/- being interest paid to bank on export packing credit?

2. Whether, in law and on facts, payments to the Directors, of Rs.5,400/- being bonus and Rs.10,500/- being leave encashment and leave travel concession, are required to be excluded for determining disallowance under section 40(c) of the Income-tax Act, 1961?"

2. The relevant assessment year was 1980-81. The assessee-company was a distributor and registered stockist of M/s New Indian Industries Limited, Baroda, for their textile accessories products and was a trading company having its registered office at Ahmedabad. The assessee claimed weighted deduction under Section 35B of the Act, inter alia, claiming Rs.2434/- in respect of rent, out of which the Income Tax Officer allowed its claim to the extent of Rs.1217/-. The Commissioner of Income Tax (Appeals) accepted the assessee's claim in toto. On further appeal, the Tribunal restricted the claim to half of the amount of rent. The assessee had also claimed weighted deduction of Rs.20640/-, being interest paid to the bank on export packing credit. That claim was rejected by the Income Tax Officer, but the Commissioner of Income Tax (Appeals) directed it to be allowed, which order was confirmed by the Tribunal. Both these items are claimed to be qualified for deduction under Section 35B. They do not fall in any of the clauses of Section 35B(1). As held by this Court in C.I.T. v. Jay Industries, reported in 1996 ITR 330, which was followed in Testeels Ltd. v. C.I.T., reported in 205 ITR 230, if the expenditure does not fall in any of the sub-clauses of clause (b) of Section 35B(1), the assessee was not entitled to claim any weighted deduction in respect of such expenditure. As held by the Supreme Court in C.I.T. v. Stepwell Industries Ltd., reported in 228 ITR 171, when a claim for weighted deduction is made, it is for the assessee to satisfy the Income Tax

Officer that the expenditure falls under any of the sub-clauses of clause (b) of Section 35B(1). In this view of the matter, the Tribunal was in error in allowing the deductions in respect of these two items. The question No.1 is, therefore, answered in the negative, against the assessee and in favour of the revenue.

3. So far as the question No.2 is concerned, it is stated that it is fully covered by the decision of this Court in *Ambica Mills Ltd. v. C.I.T.*, reported in 231 ITR 583, in which it has been held that whatever expenditure is incurred by the company, in respect of the Managing Director or other director by way of remuneration or benefit or amenity, would be covered under Section 40(c). In this view of the matter, the payments to the directors were not required to be excluded for determining disallowance under Section 40(c) of the Act. The question No.2 is, therefore, answered in the negative, in favour of the revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[A. L. DAVE, J.]

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